

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

JOHN S. STEELE v. STATE OF TENNESSEE

**Appeal from the Criminal Court for Washington County
No. 34933 Robert E. Cupp, Judge**

No. E2009-00212-CCA-R3-PC - Filed December 30, 2009

The petitioner, John S. Steele, filed in the Washington County Criminal Court a petition for post-conviction relief, alleging the ineffective assistance of counsel. The post-conviction court summarily dismissed the petition as being time-barred, and the petitioner appeals. The State filed a motion requesting that this court affirm the post-conviction court's dismissal pursuant to Rule 20, Rules of the Court of Criminal Appeals. After review, we conclude that the petition was properly dismissed. Accordingly, the State's motion is granted and the judgment of the post-conviction court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals.**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and D. KELLY THOMAS, JR., JJ., joined.

John S. Steele, Nashville, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and Sophia S. Lee, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

At trial, proof was adduced that the petitioner, who had a long history of mental illness including schizo-affective disorder, was living in an apartment in Johnson City. He called his parents and requested they come to his apartment. His parents went to the apartment and took the petitioner to a grocery store. Upon returning to the petitioner's apartment, his parents helped him carry in his groceries. The petitioner's mother put away the groceries and began to tidy the petitioner's apartment. The petitioner asked his father, the victim, for assistance in setting his alarm clock, and he complied. The petitioner also requested that the victim make various repairs in the apartment, but the victim was unable to do so. When the petitioner's parents prepared to leave, they stepped outside the apartment. The petitioner asked the victim to come back inside for a moment. The victim did so, and the petitioner closed the door behind him. From outside, the petitioner's

mother heard the victim say that the petitioner had stabbed him. Unable to get into the apartment, the petitioner's mother called 911. When the petitioner finally opened his door, his mother ran into the apartment and found the victim covered in blood, severely wounded. The petitioner's mother drove the victim to the hospital, but he died as a result of his stab wounds. When police responded to the 911 call, they found the petitioner standing outside his apartment with blood on his hands and clothes. Unaware of what had transpired, police asked if the petitioner was okay. The petitioner said that he was fine and explained that the blood was the victim's. The petitioner also said that he stabbed the victim after he attacked the petitioner. With the petitioner's permission, police went into his apartment and discovered signs of a struggle. State v. John Stephen Steele, No. E2006-00039-CCA-R3-CD, 2007 WL 2681784, at **1-2 (Tenn. Crim. App. at Knoxville, Sept. 13, 2007). The petitioner was found guilty of the second degree murder of the victim, and the trial court imposed a sentence of twenty years. The petitioner pursued a direct appeal, and, on September 13, 2007, this court affirmed the appellant's conviction. Id. The petitioner did not file an application for permission to appeal to our supreme court.

Subsequently, on November 14, 2008, the petitioner filed a petition for post-conviction relief, alleging that he was denied effective assistance of counsel. On the same day, although his original post-conviction petition had not been ruled upon, the petitioner also filed a motion to reopen his post-conviction petition. In this motion, the petitioner maintained that "new scientific evidence" establishing his actual innocence exists, specifically alleging, "I ripped the mirror (side view) off of [the victim's] FORD Explorer (truck) so he had it replaced before returning a day or two later with [the petitioner's mother]! It shows they returned in violation of the Peace Warrant under bad pretenses!!!" The petitioner asserted that he became aware of the "new scientific evidence" in January 2002. The petitioner maintains that the "new scientific evidence" establishes that he killed the victim in self-defense. The petitioner also alleged that the statute of limitations should not bar his post-conviction claim because of his mental incapacity.

The post-conviction court dismissed the petition as untimely. The court noted that this court's decision was rendered on September 13, 2007, and that the post-conviction petitions were filed on November 14, 2008, outside the one-year statute of limitations. The court further stated that the petitions did not allege any grounds qualifying as an exception to the statute of limitations. On appeal to this court, the petitioner challenges the post-conviction court's ruling.

We note that "[r]elief under [the Post-Conviction Procedure Act] shall be granted when the conviction or sentence is void or voidable because of the abridgment of any right guaranteed by the Constitution of Tennessee or the Constitution of the United States." Tenn. Code Ann. § 40-30-103 (2006). However, to obtain relief, the post-conviction petition must be filed within one year of the final action of the highest state appellate court to which an appeal is taken. Tenn. Code Ann. § 40-30-102(a) (2006); see also Williams v. State, 44 S.W.3d 464, 468 (Tenn. 2001). The statute emphasizes that "[t]ime is of the essence of the right to file a petition for post-conviction relief" and that "the one-year limitations period is an element of the right to file such an action and is a condition upon its exercise." Tenn. Code Ann. § 40-30-102(a).

Clearly, the post-conviction petition was filed outside the one-year statute of limitations. Pursuant to Tennessee Code Annotated section 40-30-102(b), a court does not have jurisdiction to consider a petition for post-conviction relief if it was filed outside the one-year statute of limitations unless (1) “[t]he claim in the petition is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required”; (2) “[t]he claim in the petition is based upon new scientific evidence establishing that such petitioner is actually innocent of the offense or offenses for which the petitioner was convicted”; or (3) the claim in the petition “seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid”

The petitioner first claims that the statute of limitations should be tolled because of newly discovered scientific evidence. However, the evidence the petitioner cites is not scientific in nature nor is it newly discovered. Therefore, the statute of limitations cannot be tolled for this reason.

Additionally, the petitioner maintains that the statute of limitations should be tolled because he was mentally incompetent. The petitioner’s statement of his incompetency is the only proof supporting his allegation. Although, in limited circumstances, the post-conviction statute of limitations may be tolled for incompetent petitioners, our supreme court has explicitly rejected the notion that “due process requires tolling for incompetency upon the *mere assertion* of a psychological problem.” State v. Nix, 40 S.W.3d 459, 463 (Tenn. 2001) (emphasis added). In the instant case, the petitioner has not met his burden of establishing, by means other than summary allegations of mental illness, that he was unable to manage his personal affairs or understand his legal rights and liabilities. Therefore, there is no discernable reason in the record to toll the post-conviction statute of limitations.

We conclude that the trial court did not err in dismissing the petitioner’s petition for post-conviction relief. Accordingly, the State’s motion is granted. The judgment of the trial court is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

NORMA McGEE OGLE, JUDGE